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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,722	09/22/2003	Leon Benhamou	1400.1375150	9692

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EXAMINER
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PUENTE, EMERSON C

ART UNIT	PAPER NUMBER
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2113

MAIL DATE	DELIVERY MODE
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07/09/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

Application No.

10/667,722

Applicant(s)

BENHAMOU ET AL.

Examiner

EMERSON C. PUENTE

Art Unit

2113

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 55.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-8,10-33,35-48,50,51,53 and 54.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: the arguments are not persuasive. In response to applicant's argument pertaining to 112 1<sup>st</sup> rejection (see bottom of page 15), "Applicant notes claim 1 does not recite "identification of failure" or "identification of the failure", but rather "...wherein identifying the failure predicted one of said protected system elements includes ...", applicant has failed to show support for "identifying the failure" or "assessing performance" being at least partially based on a protection switching priority. The specification discloses "... when a plurality of failure predicted cards have been identified, an operation 120 is performed for determining a protection switching priority among the plurality of failure predicted cards" (see paragraph 18). As such, the specification only shows support for protection switch priority being determined after "identifying of the failure".  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Emerson C Puente/  
Primary Examiner, Art Unit 2113

U.S. Patent and Trademark Office  
PTOL-303 (Rev. 08-06)

**Advisory Action Before the Filing of an Appeal Brief**

Part of Paper No. 20100706

**DETAILED ACTION****Claim Rejections - 35 USC § 101**

Claims 1-8,10-33,35-48,50,51 and 53 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Claim Rejections - 35 USC § 112**

Claims 1-8,10-33,35 and 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

**Claim Rejections - 35 USC § 103**

Claims 37,42,44-48,50, and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 6,978,398 of Harper et al. referred hereinafter "Harper '398" in view of US Patent No. 4,245,342 of Entenman.

Claims 1-3,5,6,10,12-23,27,29-33,35,36,38,40,41,and 43 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Harper '398 (which incorporates by reference Harper '266) in view of Entenman and US Patent No. 4,769,761 of Downes et al. referred hereinafter "Downes".

Claims 11, 24-26, 28, and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Harper '398 (which incorporates by reference Harper '266) in view of Entenman, Downes, and US Patent No. 6,771,440 of Smith.

Claims 53 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Harper '398 (which incorporates by reference Harper '266) in view of Entenman and Smith.

Claim 54 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Harper '398 (which incorporates by reference Harper '266) in view of Downes.

Claim 55 is allowable for reasons stated in the previous office action.